In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 182

LOUIS MILLER AND MRS. LOUIS MILLER, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

Since the filing of the Government's brief in opposition, the Court of Appeals for the Eighth Circuit, in *Beatty* v. *United States,* No. 14,198, decided September 6, 1951, has expressed its agreement with the decision below in this case and with the other decisions to the same effect cited at pages 4-5 of the brief in opposition. This makes four courts of appeals which have reached the same conclu-

sion.[1] The portion of the *Beatty* opinion which deals with the question of retroactive application of the statute here involved reads as follows:

> The next contention made is that the United States had no capacity or right to maintain an action for pecuniary recovery as to the overcharges involved. The argument is that section 205 of the Housing and Rent Act of 1947, prior to its amendment in 1949 by Public Law 31, 81st Congress, 1st Session, 50 U.S.C.A., App., § 1895, granted such a right of recovery for overcharges to the tenant alone; that the 1949 amendment, allowing the United States to institute the action, if the tenant failed to do so within 30 days from the occurrence of the violation, did not become effective until April 1, 1949, and contained no language to suggest that it was intended to have a retroactive application; and that to allow the United States therefore to bring suit for any overcharges made prior to April 1, 1949, would be giving the amendment a retrospective effect, which it was not entitled to have.
>
> The general rule of course is that statutes ordinarily will be presumed to have only a prospective and not a retroactive operation unless a contrary legislative intention is apparent. But this rule does not apply to statutes which effect merely changes in remedies or modes of procedure for enforcing existing

[1] The Eighth Circuit decision has the effect of overruling two of the three district court cases which have held to the contrary and which have not previously been discredited by appellate decisions. See the *Mashburn* and *Bize* cases cited in the second paragraph of footnote 4, p. 6, brief in opposition.

liabilities. Existing liabilities, whether they accrue before or after the enactment of such a statute, will be subjected to its operation, unless they are exempted by terms or implication, or unless the application of the statute thereto will work a gross injustice. 50 Am. Jur., Statutes, § 482, p. 505. See also *Bowles* v. *Strickland,* 5 Cir., 151 F. 2d 419, 420; *Bowles* v. *Miller,* 10 Cir., 151 F. 2d 992.

A majority in number of the District Courts of the country, before which the question of giving the 1949 amendment retroactive application has arisen, appear to have so applied it and to have sustained the right of the United States to maintain an action for liquidated damages as to previous violations. In this Circuit, the district judges who have had occasion to consider the question have been evenly divided in their views. See *United States* v. *Mashburn,* D.C.W.D. Ark., 85 F. Supp. 968; *United States* v. *Bize,* D.C. Neb., 86 F. Supp. 939; *United States* v. *Mitchell,* D.C.W.D. Mo., 86 F. Supp. 453; and the memorandum opinion of the trial judge in the present case, D.C.S.D. Ia.

Three Courts of Appeals which have passed upon the question have all accorded the 1949 amendment retroactive application to previous violations. *United States* v. *Gianoulis,* 3 Cir., 183 F. 2d 378; *Miller* v. *United States,* 5 Cir., 186 F. 2d 937; *Mattox* v. *United States,* 9 Cir., 187 F. 2d 406. We adopt the view of these cases that, with the cause of action or legal wrong remaining identical, the liability or damages recoverable being the same, and the limitation

period for suit against the defendant standing untouched, the amendment should be treated as simply providing additional machinery for enforcing the statutory responsibility of a landlord which already existed. This further seems the more logical concept on the basis of the fact—which we have previously pointed out in *Ebeling* v. *Woods,* 8 Cir., 175 F. 2d 242, 245—that the object of the recovery provisions of the Act is not merely to effect a personal disgorging of any illegal overcharges made but equally at least, and perhaps even more so, to serve as a deterrent against other such violations and also to siphon off and dissipate in the public interest the inflationary effect which such violations cumulatively would be capable of producing.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

SEPTEMBER, 1951.

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